



Signed: June 22, 2010

Leslie Tchaikovsky

LESLIE TCHAIKOVSKY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
LEO RAYMOND STEGMAN III,
Debtor.

No. 09-71251 TG
Chapter 13

MEMORANDUM OF DECISION RE MOTION FOR STAY PENDING APPEAL

The debtor has filed a motion for a stay pending the appeal from the Court's orders, granting relief from the automatic stay to secured creditor The Bank of New York Mellon (the "Bank"), dismissing his chapter 13 case, and denying reconsideration of these orders. For the reasons stated below, the motion will be denied.

BACKGROUND

The debtor filed his first chapter 13 bankruptcy petition on September 28, 2009. In his bankruptcy schedules, the debtor listed three parcels of real property, including real property located on Shattuck Avenue in Oakland, California (the "Shattuck Property"). The chapter 13 trustee moved to dismiss the case due to the debtor's failure to file a certificate evidencing the receipt of pre-petition counseling, among other things. The case was dismissed on November

1 16, 2009. On November 20, 2009, the debtor filed a motion to vacate
2 the dismissal order, noting that there was a foreclosure sale
3 scheduled on November 25, 2009 with respect to the Shattuck Property.
4 The Court denied the motion, primarily because, by that time, the
5 debtor had filed a certificate evidencing the receipt of credit
6 counseling post-petition, more than 30 days after the petition date.

7 The debtor filed his second chapter 13 petition on November 24,
8 2009. He filed his first chapter 13 plan in this case (the "First
9 Plan") on December 1, 2009. The First Plan proposed to pay the
10 chapter 13 trustee \$100 per month for 60 months and listed no secured
11 creditors. On February 5, 2010, the debtor filed his second chapter
12 13 plan (the "Second Plan"). The Second Plan proposed to pay to the
13 chapter 13 trustee \$669.50 for 60 months. Again, it failed to list
14 any secured creditors. In addition, the proposed payments to the
15 trustee exceeded the debtor's scheduled disposable income of \$117 per
16 month. On February 11, 2010, the debtor filed his third chapter 13
17 plan (the "Third Plan"). The Third Plan proposed to pay to the
18 chapter 13 trustee \$1,800 per month for 60 months. The Third Plan
19 listed three secured creditors and estimated the arrearages due to
20 each. The increased proposed payment exacerbated the feasibility
21 problem, there having been no amendment to Schedules I and J.

22 After the meeting of creditors was conducted and concluded, the
23 chapter 13 trustee noticed the Third Plan for a contested
24 confirmation hearing on April 16, 2010. On April 15, 2010, the Bank
25 filed a motion for relief from the automatic stay, scheduling a
26 preliminary hearing on the motion for April 30, 2010. The motion

1 sought relief from the automatic stay to foreclose its security
2 interest on the Shattuck Property. The motion based its request for
3 relief on the debtor's failure to make post-petition payments to the
4 Bank. It also based its request on the fact that the debtor was not
5 its original borrower and that its original borrower, Joseph Williams
6 ("Williams"), had transferred the Shattuck Property to the debtor
7 without the secured creditor's consent, while the Shattuck Property
8 was in foreclosure. The Shattuck Property was transferred to the
9 debtor on October 9, 2009, shortly after the debtor filed his first
10 chapter 13 petition.

11 At the confirmation hearing on April 16, 2009, the chapter 13
12 trustee informed the Court that the debtor had failed to serve the
13 Third Plan on creditors, had only made one partial plan payment, and
14 was delinquent in plan payments in the total amount of \$6,500. She
15 also informed the Court that Alameda County had filed a claim for
16 over \$37,000 in domestic support arrearages. Finally, she informed
17 the debtor and the Court that the plan payments would have to be
18 increased substantially in order for the Plan to fund. The debtor
19 was given a deadline for filing and serving an amended plan that
20 accounted for these deficiencies. The confirmation hearing was
21 continued to May 14, 2010. The Bank's preliminary hearing on its
22 motion for relief was later continued to the same date. The Court
23 warned the debtor that the case would be dismissed unless he
24 corrected the deficiencies noted by the trustee.

25 On April 21, 2010, the debtor filed his fourth plan (the "Fourth
26 Plan"), providing for increased payments, although less than the

1 amount recited by the trustee. The Fourth Plan listed secured
2 creditors but failed to identify the arrearages due to them. The
3 Bank filed an objection to confirmation of the Fourth Plan. It
4 contended that the debtor had filed the case in bad faith. It noted
5 that, not only had the debtor received an unauthorized transfer of
6 the Shattuck Property on October 9, 2009, he had received an
7 unauthorized transfer of another property on September 28, 2009, the
8 day his first bankruptcy petition was filed. In addition, the Bank
9 noted that the Fourth Plan continued to provide insufficient payments
10 to fund and, in any event, based on the debtor's reported disposable
11 income, was not feasible. In addition, the debtor had failed to make
12 the required post-petition payments to the Bank on the Shattuck
13 Property.

14 At the hearing, counsel for the Bank informed the Court that
15 Williams, its original borrower, had also filed a bankruptcy petition
16 and had scheduled the Shattuck Property as his property. The Court
17 asked the debtor to explain his relationship to the Shattuck Property
18 and to Williams. The debtor explained that the Shattuck Property was
19 a four-plex and that he lived in one of the units. He stated that
20 he had been managing all three of Williams' properties, that Williams
21 had been unable to make the payments on the mortgages, and that
22 Williams had consequently transferred the properties to him. The
23 debtor stated that he intended to make the monthly payments and
24 ultimately to sell the properties. The debtor did not explain
25 whether he had paid Williams any of his own money for the transfers
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1 nor did he explain who he thought would be entitled to receive the
2 proceeds from any sales of the properties.

3 Based on the foregoing undisputed facts, the Court concluded,
4 while the debtor may have believed he was behaving in good faith as
5 a subjective matter, objectively speaking, his conduct was in bad
6 faith. In addition, it appeared clear that the debtor would be
7 unable to propose a feasible chapter 13 plan since he had no income
8 other than the rents on the various properties. Consequently, the
9 Court concluded that the Bank's motion for relief from the automatic
10 stay should be granted, with in rem relief provided as to the
11 Shattuck Property, and that the case should be dismissed. For the
12 same reason, the Court concludes that the debtor's motion for a stay
13 of these orders should be denied.

14 Based on the foregoing, it is
15 SO ORDERED.

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